

1 SULLIVAN LAW  
A Professional Corporation  
2 J. D. SULLIVAN, NV Bar No. 5516  
GENE M. KAUFMANN, NV Bar No. 6704  
3 1625 Highway 88, Suite 401  
Minden, Nevada 89423

4 Telephone: (775) 782-6915  
5 Telecopier: (775) 782-3439

6 Attorneys for Plaintiff  
RUB-U-RITE TRUCKING, INC.  
7 dba Nevada Organics

8  
9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11  
12 RUB-U-RITE TRUCKING, INC. dba  
Nevada Organics, a Nevada  
13 corporation,

14 Plaintiff,

15 vs.

16 NEVADA ORGANIX LLC, a Nevada  
limited liability company; and  
17 DOES 1 through 50, inclusive,

18 Defendants.  
19 \_\_\_\_\_/

**COMPLAINT FOR TRADEMARK  
INFRINGEMENT, UNFAIR COMPETITION,  
AND INJUNCTIVE RELIEF**

**Lanham Act, 15 U.S.C. §§1051 et  
seq.**

**DEMAND FOR TRIAL BY JURY**

20 COMES NOW PLAINTIFF, RUB-U-RITE TRUCKING, INC. dba Nevada  
21 Organics ("Nevada Organics" or "Plaintiff"), a Nevada corporation,  
22 by and through its undersigned counsel, and files this Complaint  
23 against the above-named Defendants, averring and alleging as  
24 follows:

25 **PREFACE**

26 1. This is an action to enjoin and collect damages stemming  
27 from Defendant Nevada Organix LLC's ("Nevada Organix" or  
28 "Defendant") intentional acts of trademark infringement and unfair

1 competition under the Lanham Act, 15 U.S.C. §1051 et seq., as well  
2 as common law and state law.

3 **JURISDICTION, VENUE, AND PARTIES**

4 2. This case and controversy arise under the laws of the  
5 United States and the State of Nevada.

6 3. This Court has original jurisdiction of this trademark  
7 matter, pursuant to 15 U.S.C. §1121 and 28 U.S.C. §§1331 and 1338.  
8 The Court has supplemental jurisdiction over the related state and  
9 common law claims set forth below, pursuant to 28 U.S.C. §1367.  
10 Nevada Organics' claims are predicated upon the Trademark Act of  
11 1946, as amended, 15 U.S.C. §1051, et seq. ("Lanham Act"), and  
12 substantial and related claims under the statutory and common law  
13 of the State of Nevada.

14 4. Nevada Organics is a Nevada corporation with its principal  
15 place of business in Carson City, Nevada.

16 5. Nevada Organix is a Nevada limited liability company with  
17 its principal place of business in the State of Nevada, having been  
18 formed in Carson City, Nevada.

19 6. The true names and/or capacities of Defendant DOES 1  
20 through 50, are unknown to Plaintiff, who therefore cannot identify  
21 them at this time. When the true identities and/or capacities of  
22 DOES 1 through 50 are ascertained, Plaintiff will seek leave of  
23 court to amend this Complaint to reflect the same.

24 7. Plaintiff is informed and believes, and based thereon  
25 alleges, that each of the Defendants is, and at all times herein  
26 mentioned was, the agent, servant, co-conspirator, and employee of  
27 each of the remaining Defendants, and each of the acts or failures  
28 to act of each of the Defendants, as herein alleged, were within

1 the course and scope of each such Defendant's authority as such  
2 agent, servant, and employee, with the permission, consent,  
3 knowledge, prior authorization, and subsequent ratification of each  
4 of the remaining Defendants.

5 8. Venue is proper in the District of Nevada, under 28 U.S.C.  
6 §1391(b), in that Defendant, Nevada Organix, "resides" (see 28  
7 U.S.C. §1391(c)(2)) in the district, as an LLC filed in Carson  
8 City, Nevada and subject to personal jurisdiction there; and a  
9 substantial part of the events or omissions, giving rise to the  
10 within claims, took place in the district, specifically in and  
11 about Carson City, Nevada.

12 **GENERAL ALLEGATIONS**

13 9. Nevada Organics realleges Paragraphs 1 through 8 and  
14 incorporates same herein by reference, as though expressly set  
15 forth herein.

16 10. Nevada Organics has been using its trademark, NEVADA  
17 ORGANICS®, for selling its landscaping and roadway products,  
18 including humus and soils, since as early as March 8, 1995.

19 11. The United States Patent and Trademark Office registered  
20 the NEVADA ORGANICS® trademark on September 29, 2015. See the  
21 attached Exhibit A, U. S. Trademark Certificate of Registration of  
22 NEVADA ORGANICS®, for organic landscape materials, namely humus and  
23 top soil. Therefore, Plaintiff is presumed to have the exclusive  
24 right to use the NEVADA ORGANICS® mark, in Nevada and throughout  
25 the United States, in relation to the same or similar goods and  
26 services.

27 12. Similarly, on March 11, 2015, the Nevada Secretary of  
28 State registered the NEVADA ORGANICS® trademark in the State of

1 Nevada, for sales and delivery of landscape and roadway materials,  
2 decomposed granite, humus, topsoil, rock, and sand. See the  
3 attached Exhibit B Nevada Certificate of Registration for NEVADA  
4 ORGANICS®.

5 13. On information and belief, Defendant Nevada Organix has  
6 been in the process of licensing and preparing to open a marijuana  
7 cultivation, production, and dispensing business in Nevada since on  
8 or about October 4, 2013. See Exhibit E, pages 21-26, evidencing  
9 Secretary of State formation of Nevada Organix and State marijuana  
10 licensing.

11 14. Nevada Organics does business in and about the Carson  
12 City area, where Nevada Organix has obtained its Nevada State  
13 license to cultivate, produce, and dispense marijuana products.  
14 Id.

15 15. There is a likelihood of confusion, in the public's mind,  
16 as to the source of the NEVADA ORGANICS® and NEVADA ORGANIX branded  
17 goods and services.

18 16. Nevada Organix use, or intended use, of the NEVADA  
19 ORGANIX mark infringes and imminently threatens to infringe upon  
20 Nevada Organics' longstanding use of the NEVADA ORGANICS® mark.  
21 There has already been actual public confusion, by way of  
22 misdirected phone calls. See the attached Exhibit C Misdirected  
23 Phone Log.

24 17. Nevada Organix is actually aware of its infringement and  
25 so far has refused to cease its infringing activities. The  
26 continuous infringing and infringement threatening activities by  
27 Nevada Organix are therefore, by definition, willful. This is an  
28 "exceptional" trademark infringement case under the Lanham Act.

1 See, e.g., Exhibit D hereto, wherein, by press account, Defendant's  
2 principal, Bill Myer, admits during a public hearing before the  
3 Carson City Planning Commission, in response to allegations of  
4 confusion between the NEVADA ORGANICS and NEVADA ORGANIX marks,  
5 that "if problems arise he can communicate about what might be  
6 done." However, Defendant and Mr. Myer have been repeatedly  
7 advised of infringement problems, in public hearings, and by way of  
8 multiple cease-and-desist letters. But Defendant has nevertheless  
9 failed and refused to communicate, respond to cease and desist  
10 letter, or stop use and threatened use of the infringing NEVADA  
11 ORGANIX mark. See the attached Exhibit E Cease and Desist Letters  
12 delivered to Nevada Organix by Plaintiff's attorney, which have  
13 been utterly ignored, further confirming that this is an  
14 exceptional trademark infringement case under the Lanham Act.

15 **FIRST CAUSE OF ACTION**

16 **FEDERAL TRADEMARK INFRINGEMENT**

17 **Violation of Lanham Act, 15 U.S.C. §1114**

18 **(against all Defendants)**

19 18. Nevada Organics realleges Paragraphs 1 through 17 and  
20 incorporates same herein by reference, as though expressly set  
21 forth herein.

22 19. Defendants' distribution, marketing, promotion, offering  
23 for sale, and sale of goods that bear the NEVADA ORGANIX name, or  
24 threat thereof, is likely to cause confusion, mistake, or deception  
25 as to the source, affiliation, sponsorship, or authenticity of  
26 Defendants' goods.

27 20. As a result of Defendants' unauthorized use of trademarks  
28 that are confusingly similar to Nevada Organics' federally and

1 state-registered NEVADA ORGANICS® mark, the public is likely to  
2 believe that Defendants' goods have been manufactured, approved by,  
3 or are affiliated with Nevada Organics. Consequently, Nevada  
4 Organics' ability to gain revenue through the sale of merchandise  
5 bearing the NEVADA ORGANICS® mark is being limited and infringed on  
6 by Nevada Organix.

7 21. Defendants' unauthorized use of the confusingly similar  
8 NEVADA ORGANIX trademark falsely represents Defendants' products as  
9 emanating from or being authorized by Nevada Organics and places  
10 beyond Nevada Organics' control, the quality of products bearing,  
11 and the message associated with, the Nevada Organics' registered  
12 NEVADA ORGANICS® trademark.

13 22. Defendants' infringement of the NEVADA ORGANICS®  
14 trademark is willful, intended to reap the benefit of the goodwill  
15 of Nevada Organics, and violates Section 32(1) of the Lanham Act,  
16 15 U.S.C. §1114(1).

17 23. As a result of Defendants' wrongful conduct, Nevada  
18 Organics has suffered, and will continue to suffer, substantial  
19 damages and irreparable harm.

20 24. Under 15 U.S.C. §1117(a), Nevada Organics is entitled to  
21 recover damages, which include any and all profits Defendants have  
22 made as a result of their wrongful conduct.

23 25. Nevada Organics is also entitled to injunctive relief  
24 pursuant to 15 U.S.C. §1116(a). Nevada Organics has no adequate  
25 remedy at law for Defendants' wrongful conduct, because among other  
26 things, (a) the NEVADA ORGANICS® trademark is unique and valuable  
27 property which has no readily determinable market value, (b)  
28 Defendants' infringement constitutes irreparable harm to Nevada

1 Organics, such that Nevada Organics could not be made whole by any  
2 monetary award, (c) if Defendants' wrongful conduct is allowed to  
3 continue, the public is likely to become further confused,  
4 mistaken, or deceived as to the source, origin, or authenticity of  
5 the infringing materials, and (d) Defendants' wrongful conduct, and  
6 the resulting damage to Nevada Organics, is continuing.

7 26. Nevada Organics is also entitled to an order compelling  
8 the impounding of all infringing materials being used, offered,  
9 marketed, or distributed by Defendants.

10 27. Further, Nevada Organics is entitled to recover its  
11 attorney's fees and costs of suit pursuant to 15 U.S.C. §1117, in  
12 that this is an exceptional case of trademark infringement.

13 **SECOND CAUSE OF ACTION**

14 **FALSE DESIGNATION OF ORIGIN / UNFAIR COMPETITION**

15 **Violation of Lanham Act, 15 U.S.C. §1125(a)**

16 **(against all Defendants)**

17 28. Nevada Organics realleges Paragraphs 1 through 27 and  
18 incorporates same herein by reference, as though expressly set  
19 forth herein.

20 29. Defendants' distribution, marketing, promotion, offering  
21 for sale, and sale of goods bearing the NEVADA ORGANIX trademark  
22 constitute false designations of origin and false descriptions or  
23 representations that Defendants' products originate from or are  
24 authorized by Nevada Organics, when in fact they are not. Such  
25 conduct limits Nevada Organics' ability to interact with potential  
26 supporters and gain contributions through the sale of merchandise  
27 bearing the original NEVADA ORGANICS® trademark.

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1       30. As a result of Defendants' unauthorized infringement of  
2 the NEVADA ORGANICS® trademark by use of a mark or marks that are  
3 confusingly similar to the NEVADA ORGANICS® trademark, the public  
4 is likely to be misled and confused as to the source, sponsorship,  
5 or affiliation of Defendants' products.

6       31. Defendants' conduct is willful, and intended to reap the  
7 benefit of Nevada Organics' goodwill, and violates Section  
8 43(a)(1)(A) of the Lanham Act, 15 U.S.C. §1125(a)(1)(A).

9       32. Defendants' wrongful conduct is likely to continue unless  
10 restrained and enjoined.

11       33. As a result of Defendants' wrongful conduct, Nevada  
12 Organics has suffered and will continue to suffer damages and  
13 irreparable harm. Nevada Organics is entitled to injunctive relief  
14 and to an order compelling the impounding of all imitation and  
15 infringing trademarks being used, offered, advertised, marketed,  
16 installed, or distributed by Defendants.

17       34. Nevada Organics has no adequate remedy at law for  
18 Defendants' wrongful conduct because, among other things, (a) the  
19 NEVADA ORGANICS® trademark is unique and valuable property  
20 which has no readily determinable market value, (b) Defendants'  
21 infringement constitutes harm to Nevada Organics' such that Nevada  
22 Organics' could not be made whole by any monetary award, (c) if  
23 Defendants' wrongful conduct is allowed to continue, the public is  
24 likely to become further confused, mistaken, or deceived as to the  
25 source, origin, or authenticity of the infringing materials, and  
26 (d) Defendants' wrongful conduct, and the resulting damage to  
27 Nevada Organics is continuing.

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1 Nevada Organix.

2 39. Defendants' unauthorized use of the confusingly similar  
3 NEVADA ORGANIX trademark falsely represents Defendants' products as  
4 emanating from or being authorized by Nevada Organics and places  
5 beyond Nevada Organics' control, the quality of products bearing,  
6 and the message associated with, the registered NEVADA ORGANICS®  
7 trademark.

8 40. Defendants' infringement of the NEVADA ORGANICS®  
9 trademark is willful and intentional, intended to be used to cause  
10 confusion, mistake or deception, intended to reap the benefit of  
11 the goodwill of Nevada Organics, and violates NRS 600.420(2).

12 41. As a result of Defendants' wrongful conduct, Nevada  
13 Organics has suffered, and will continue to suffer, substantial  
14 damages. Under NRS 600.430, Nevada Organics is entitled to recover  
15 damages, which include any and all profits Defendants have made as  
16 a result of their wrongful conduct.

17 42. In addition, because Defendants' infringement of the  
18 NEVADA ORGANICS® trademark was willful and intentional, within the  
19 meaning of NRS 600.420(2), the award of actual damages and profits  
20 should be trebled pursuant to NRS 600.430(2)(c).

21 43. Nevada Organics is also entitled to injunctive relief  
22 pursuant to NRS 600.430(2)(a). Nevada Organics has no adequate  
23 remedy at law for Defendants' wrongful conduct because, among other  
24 things, (a) the NEVADA ORGANICS® trademark is unique and valuable  
25 property which has no readily determinable market value, (b)  
26 Defendants' infringement constitutes irreparable harm to Nevada  
27 Organics such that Nevada Organics could not be made whole by any  
28 monetary award, (c) if Defendants' wrongful conduct is allowed to

1 continue, the public is likely to become further confused,  
2 mistaken, or deceived as to the source, origin, or authenticity of  
3 the infringing products, and (d) Defendants' wrongful conduct, and  
4 the resulting damage to Nevada Organics, is continuing.

5 44. Pursuant to NRS 600.430, Nevada Organics is entitled to  
6 an order compelling the impounding of all infringing materials  
7 being used, offered, marketed, or distributed by Defendants, and to  
8 trebled damages, because Defendants' violations consist of the  
9 intentional imitation and infringement of Plaintiff's registered  
10 trademark.

11 45. Nevada Organics is also entitled to recover its  
12 attorney's fees and costs of suit pursuant to NRS 600.430(3).

13 **FOURTH CAUSE OF ACTION**

14 **COMMON LAW TRADEMARK INFRINGEMENT**

15 **(against all Defendants)**

16 46. Nevada Organics realleges Paragraphs 1 through 45 and  
17 incorporates same herein by reference, as though expressly set  
18 forth herein.

19 47. Defendants' aforesaid conduct constitutes trademark  
20 infringement in violation of the common law of the State of Nevada.

21 48. Upon information and belief, Defendants' conduct was and  
22 is willful and intentional.

23 49. By reason of Defendants' conduct, Nevada Organics has  
24 been damaged in an amount to be determined at trial and has  
25 suffered and will continue to suffer irreparable injury for which  
26 Nevada Organics has no adequate remedy at law.

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**FIFTH CAUSE OF ACTION**  
**COMMON LAW UNFAIR COMPETITION**  
**(against all Defendants)**

50. Nevada Organics realleges Paragraphs 1 through 49 and incorporates same herein by reference, as though expressly set forth herein.

51. Defendants' aforesaid conduct constitutes unfair competition in violation of the common law of the State of Nevada.

52. Upon information and belief, Defendants' conduct was and is willful and intentional.

53. By reason of Defendants' conduct, Nevada Organics has been damaged in an amount to be determined at trial and has suffered and will continue to suffer irreparable injury for which Nevada Organics has no adequate remedy at law.

WHEREFORE, Nevada Organics prays that:

1. Defendants and their affiliated companies, principals, officers, employees, directors, servants, agents, representatives, distributors, attorneys, and persons, firms or corporations under their control, or in active concert or participation with Defendants, be permanently enjoined and restrained from:

(a) using the NEVADA ORGANIX mark, or any other trademarks that are confusingly similar to the registered NEVADA ORGANICS<sup>®</sup> trademark, for retail or wholesale products, or making any other unlawful use of the NEVADA ORGANICS<sup>®</sup> trademark;

(b) directly or indirectly engaging in any conduct that tends to falsely represent that, or is likely to confuse, mislead, or deceive purchasers, Defendants' customers and/or members of the public to believe that the actions of Defendants are sponsored by,

1 licensed by, or in any way affiliated or connected with Nevada  
2 Organics.

3 2. The Court order an accounting of Defendants' profits  
4 gained as a result of their infringing activities and otherwise  
5 unlawful actions;

6 3. The Court award Nevada Organics all profits received by  
7 Defendants from sales and revenues of any kind made as a result of  
8 their infringing activities and otherwise unlawful actions;

9 4. The Court award Nevada Organics all damages sustained by  
10 Nevada Organics as a result of Defendants' acts of infringement in  
11 an amount to be proved at trial, and that such damages be trebled;

12 5. The Court award Plaintiff exemplary and punitive damages  
13 to deter any future willful infringement as the Court finds  
14 appropriate.

15 6. The Court award Nevada Organics interest, costs, and  
16 attorney's fees pursuant to, inter alia, 15 U.S.C. §1117(a) and NRS  
17 600.430(3), finding that this is an exceptional case under the  
18 Lanham Act.

19 7. The Court order that Defendants file with this Court and  
20 serve upon Nevada Organics within thirty (30) days following this  
21 Court's injunction, a written report, under oath, setting forth in  
22 detail the manner and form in which Defendants have complied with  
23 such injunction; and

24 8. The Court award Nevada Organics such other and further  
25 relief as the Court deems just and proper.

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1 Dated: December 11, 2015

SULLIVAN LAW  
A Professional Corporation

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3 By: /s/ J. D. SULLIVAN

4 Attorneys for Plaintiff,  
5 RUB-U-RITE TRUCKING, INC. dba  
6 Nevada Organics

7 **DEMAND FOR TRIAL BY JURY**

8 Plaintiff hereby demands trial by jury in the above  
9 entitled action, of all issues so triable, pursuant to FRCP Rules  
10 38 and 39, and related case law.

11 Dated: December 11, 2015

SULLIVAN LAW  
A Professional Corporation

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13 By: /s/ J. D. SULLIVAN

14 Attorneys for Plaintiff,  
15 RUB-U-RITE TRUCKING, INC. dba  
16 Nevada Organics  
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